IN THE HIGH COURT FOR THE STATE OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP NO. 7299 OF 2006
DATE OF DECISION:26.9.2006

TARSEM LAL

...PETITIONER

VERSUS

UNION OF INDIA AND OTHERS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.
HON'BLE MR. JUSTICE M.M.S. BEDI.

Present: Ms. Jigyasa Tanwar, Advocate for the petitioner.

Mr. Gurpeet Singh, Advocate for the respondents.

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Written statement on behalf of respondents has been filed in Court today, which is taken on record. Copy thereof has been furnished to the learned counsel for the petitioner.

The prayer made in this petition is that the order dated 19.6.2004 (P-1) passed by the The Principal, Controller of Defence Accounts (Pension) Allahabad (for short 'the PCDA (Pension)')-respondent No.3 declining the request of the petitioner for grant of disability pension, be quashed. The petitioner was invalidated out of service on 1.8.2003 after having rendered service from 4.8.1987. It is the admitted case of the parties that the petitioner was brought before a Release Medical Board, which viewed that his disability had aggravated by military service due to stress and strain of service and assessed the disability of 30 per cent for life. It is also admitted that in accordance with the instructions dated 31.1.2001, the disability which is less then 50 per cent has to be deemed to be more than 50 per cent. Therefore, it would imply that the petitioner, who has suffered

disability 30 per cent would be entitled to be considered, who has suffered disability to the extent of 50 per cent for disability element of pension. The aforesaid instruction in so far as the relevant for the issue raised in the petition read as under:

> *"5. The Fifth Central Pay Commission also suggested certain procedural changes. These have also been considered by the Government. The President is now pleased to decided as under:*
>
> *(i). The extent of disability or functional incapacity shall be determined in the following manner for purposes of computing the disability element forming part of benefits:-*

Percentage of disability assessed by Medical Board	*Percentage to be reckoned for computation of disability element*
Less than 50	*50*
Between 50 and 75	*75*
Between 76 and 100	*100"*

These instructions are applicable to the case of the petitioner as he has retired invalidated out of service after 1.1.1996.

The question which arises for consideration before us is that whether the PCDA (Pension) can sit in judgment over the opinion of expert of medical line, who has stated that disability suffered by the petitioner is aggravated by military service and his percentage of disability was 30 per cent. This issue is not res-integra as this Court after considering the judgment in the case of **Ex. Subedar Jasmail Singh vs. Union of India and others**, 2006(2) Law Herald (P&H) 1480, had held that the Chief Controller of Defence Accounts (Pension) respondent No.3 has not shown the matter to nullify the opinion expressed by the Resurvey Medical Board.

According to the instructions the disability, which is less than 50 % is construed as more than 50 % the matter is squarely covered by the aforementioned judgment of the Division Bench and therefore, deserves to be allowed.

In view of the above the writ petition is allowed, the order dated 16.6.2004 passed by respondent No.3 is hereby quashed. We issue a direction to the respondents to release the disability pension of the petitioner w.e.f. 1.8.2003 by deeming his disability as 50 %. The petitioner would also be entitled to interest @ 6 % per annum from the date of the amount was payable till its payment.

(M.M.Kumar)
Judge

September 26, 2006
gsv

(M.M.S. Bedi)
Judge